

Toniq Limited: General Terms and Conditions for the supply of Services and Licensed Software

1. AGREEMENT DETAILS

- 1.1 **Agreement:** The Agreement is made up of:
 - (a) each Service Schedule;
 - (b) these General Terms and Conditions; and
 - (c) any Schedules to these General Terms and Conditions.
- 1.2 **Precedence:** Any conflict or difference between the documents comprising the Agreement, will be resolved by the order of precedence of the documents as stated in clause 1.1 above.
- 1.3 **Term of Agreement:** The Agreement commences on Start Date and continues until it is terminated in accordance with its terms.
- 1.4 **Initial Term and Renewal Term:** Subject to the terms of the Agreement, a Service Schedule will be for the Initial Term and will renew for each Renewal Term (where applicable).
- 1.5 **Customer to purchase the Services:** The Customer agrees to purchase the Services and accepts the grant of the licenses for the Licensed Software for each Service Schedule for the Initial Term and any Renewal Term (subject to the terms of the renewal).
- 1.6 **No term stated:** Where there is no initial term or term stated in a Service Schedule, the Service Schedule will be for an initial term of one month and thereafter the Service Schedule will automatically renew for successive one month periods unless the Customer or the Supplier provides written notice to the other party that the Service Schedule will not renew at least 25 days prior to the end of the then-current term.
- 1.7 **Non-exclusive arrangement:** The Services and Licensed Software provided by the Supplier under the Agreement are not exclusive to the Customer. The Supplier may provide services the same or similar to the Services to any other person during the Term.

2. SERVICES

- 2.1 **Supply of Services.** Subject to the Customer meeting its obligations under the Agreement, the Supplier must supply the Services, Licensed Software and Support Services in accordance with the Agreement. The Supplier must when providing the Services do so with due care and in accordance with Good Industry Practice and all Applicable Laws. The Supplier may at any time allow any of its Related Companies to perform any part of the Services on its behalf. The Supplier will be responsible for the performance of the Services and any obligations under this Agreement, whether performed by the Supplier or its Related Companies.
- 2.2 **Third Party Services Terms and Conditions:** Where a Service or Licensed Software includes a Third Party Service the Customer acknowledges and agrees:
 - (a) to be bound by any Third Party Services Terms and Conditions that are relevant to those Third Party Services and the Third Party Services Terms and Conditions are incorporated into the Agreement; and
 - (b) it is the intention to include the Third Party Service Providers as beneficiaries of the Agreement for the purpose of the Contractor and Commercial Law Act 2017 with all rights and remedies available as if Third Party Service Provider was a party to the Agreement.
- 2.3 **Changes to functionality:** The Supplier may at any time modify, enhance or discontinue any feature, functionality, user interface or underlying technology of any Service or Licensed Software (**Change**):
 - (a) if the Supplier reasonably believes the Change is minor and the Change will be made without

notice and with no adjustment to the relevant Fee; or

- (b) if the Supplier reasonably believes the Change is material or may have a detrimental effect on the Customer or the Customer's use of the Service or Licensed Software and the Supplier must give the Customer 30 days written notice before implementing the Change, except where the Change is as a result of a Regulatory Event and it is not practicable to do so, in which case the Supplier will give as much notice as reasonably practicable. The Supplier may adjust the Fee to reflect the Change; or
- (c) as a result of a Third Party Service ceasing or becoming unavailable to the Supplier and the Supplier must give the Customer as much notice as reasonably practicable.

- 2.4 **Suspension:** Without limiting any other rights the Supplier has, the Supplier may immediately suspend the Customer's access to the Services or the grant of licenses under the Agreement where the Supplier reasonably believes or suspects that the Customer (or any of its Personnel or Users):

- (a) is (or have been) in material breach of the Agreement;
- (b) is accessing or using the Services or Licensed Software in an unauthorised, inappropriate or unacceptable manner (or otherwise not in accordance with this Agreement);
- (c) use of the Services or Licensed Software may undermine the security or integrity of the Services or Licensed Software or any Supplier System, or result in a breach of any Applicable Laws; or,
- (d) use of the Services or Licensed Software is an infringement of the Supplier's (or a third party's) Intellectual Property Rights.

3. CUSTOMER'S OBLIGATIONS

- 3.1 **Customer's obligations:** The Customer must:
 - (a) perform its obligations in the Agreement and provide all signoffs as reasonably required by the Supplier;
 - (b) comply with the Supplier's reasonable directions in relation to the security and technical aspects and use of the Services and the Licensed Software;
 - (c) immediately notify the Supplier if it becomes aware of or reasonably suspects there is a problem with the Services or the Licensed Software;
 - (d) provide the Supplier with equipment and resources and access to its systems, facilities, information and Personnel as reasonably required by the Supplier to perform the Services and provide the Licensed Software;
 - (e) ensure all information provided to the Supplier in connection with the Agreement is in all material respects true and correct; and
 - (f) in all matters relating to the Agreement comply with all Applicable Laws.
- 3.2 **Access Credentials:** The Customer agrees that:
 - (a) Access Credentials are assigned to individual, named users (**Users**) and are intended for use solely by the individual to whom they are issued;
 - (b) it must ensure that Access Credentials are not shared, transferred, or used by any other person or entity;
 - (c) it is responsible for maintaining the confidentiality and security of all Access Credentials and for all activities that occur under the Access Credentials; and
 - (d) without limiting any other rights, the Supplier may have, any unauthorised use, sharing, or disclosure of Access Credentials constitutes a

material breach of the Agreement and may result in immediate suspension or termination of access to the Services and/or Licensed Software.

3.3 **Personnel:** A party must ensure that its Personnel observe the provisions of the Agreement as if they were a party to it. A party is liable for the acts or omissions of its Personnel in matters relating to the Agreement.

3.4 **Security:** The Customer acknowledges that the Services and the Licensed Software are not a security software product and do not offer protection against the transmission of viruses, hacking or other attempts to gain unauthorised access to the Customer's network or the software interfaces. The Customer must install and maintain appropriate security solutions to avoid unauthorised access to its network, including adequate firewall, intrusion detection, anti-virus and security solutions.

3.5 **Vault Services:** Where the Supplier provides Vault Services, the Customer acknowledges and agrees that:

- (a) To access the Vault Service, the Customer must download the Licensed Software provided by the Supplier and use of the Licensed Software is subject to these General Terms and Conditions.
- (b) The Vault Service is to be used solely for the backup of data that is processed using Licensed Software (Dispensary and/or Retail) (**Backup Data**).
- (c) The Customer must promptly check the backup status reports provided to the Customer and immediately notify the Supplier of any problems. Where the Customer has failed to do this and the Supplier is unable to restore Backup Data, the Supplier will not be liable for any failure to restore Backup Data for the period commencing from the first status report that notified of a problem with the Vault Service.
- (d) The Vault Service must not be used for Backup Data which is time critical – for example where data recovery is absolutely essential within a Business Day or for life support systems.
- (e) The Backup Data is encrypted and this is protected with a password created by the Customer. The Customer acknowledges that it is responsible for managing and remembering the password and the Backup Data cannot be restored without the password.
- (f) The Supplier is not obligated to make the restored data operable.
- (g) Where the Supplier agrees (in its sole discretion) to back up data or files that is not Backup Data, the Customer does so at its own risk and the Supplier is under no obligation to restore this data or files but may do so on a case by case basis, for additional fees.
- (h) Without limiting clause 14.1 (*Force Majeure*) the Supplier is not responsible for a failure to supply the Vault Services due to events outside of the Supplier's control including a loss of power or internet connection, a malfunction of the Customer's computers, network or systems or the Customer's computer/s being turned off.
- (i) Notwithstanding clause 11.1 (*Limitation of Liability*) the Supplier's maximum aggregate liability for an event (or a series of related events) giving rise to a failure to restore Backup Data in accordance with the Agreement for each Business Day the failure continues is limited to \$500 per Business Day up to a maximum of 30 Business Days.

3.6 **Restrictions:** The Customer must not:

- (a) use the Services or Licensed Software contrary to any Applicable Law;
- (b) use the Services or Licensed Software to benefit a third party (or the business of a third party) or

otherwise commercialise the Services or Licensed Software.

- (c) attempt (and must not permit any third party) to copy, duplicate, adapt, reverse engineer, decompile, disassemble, modify, adapt, create derivative works from or distribute or make error corrections to the Services or Licensed Software in whole or in part;
- (d) unless expressly permitted by the terms of the Agreement, sub-license, assign, transfer or novate the benefit or burden of the licences or access to the Services in whole or in part;
- (e) allow the Services or Licensed Software to become the subject of any charge, lien or encumbrance;
- (f) store, distribute, introduce or transmit through the Services or the Licensed Software or any Supplier's System any content that may be offensive or defamatory or material or data in breach of any Applicable Law (including credit card details and any data or other material protected by Intellectual Property Rights which the Customer does not have the right to use);
- (g) access all or any part of the Services or Licensed Software in order to build a product or service or similar software;
- (h) store, distribute, introduce or transmit through the Services or Licensed Software any Malicious Code or any vulnerability;
- (i) attempt (or permit any third party) to access the source code for the Licensed Software or any Supplier System;
- (j) challenge the Supplier's ownership, or the validity of the Services or Licensed Software, or any other item or material created or developed by or on behalf of the Supplier under or in connection with the Agreement (including the Intellectual Property Rights in those items).

3.7 **Additional Restrictions:** Except as otherwise expressly agreed in writing the Customer must not:

- (a) use APIs and/or integrations to attempt to obtain, or assist third parties in obtaining, access to the Services or Licensed Software;
- (b) attempt to introduce or integrate (or assist third parties to introduce or integrate) any APIs, and/or electronic connections or other third party integrations or bot like applications (or similar applications/features) to access the Services or Licensed Software;
- (c) conduct, facilitate, enable, authorise or permit any text or data mining or software scraping in relation to the Services or Licensed Software, for any purpose, including the development, training, fine-tuning or validation of AI systems or models.
- (d) permit, authorise or attempt the use of any "robot", "bot", "spider", "scraper" (or similar applications or technology) or other automated device, program, tool, algorithm, code, process or methodology to access, obtain, copy, monitor or republish any portion of the Services, or Licensed Software or any data, content, information or services accessed via the same.
- (e) permit, authorise or attempt the use of any automated analytical technique in relation to the Services or Licensed Software aimed at analysing text and data in digital form to generate information or develop, train, fine-tune or validate AI systems or models which includes but is not limited to patterns, trends and correlations.

4. LICENSED SOFTWARE

4.1 **Grant of Licences:** Where a Service Schedule or the Service includes the supply of Licensed Software, the

- Supplier grants to the Customer a revokable, non-exclusive and non-transferable licence for the relevant term of the Service Schedule to use the Licensed Software for its lawful internal business purposes only and on the terms and conditions of the Agreement.
- 4.2 **Medicine File:** Where access to the Medicine File is included as part of the Licensed Software the Supplier grants to the Customer a revokable, non-exclusive and non-transferable licence for the relevant term of the Service Schedule to use the Medicine File only for its lawful internal business purpose to process prescriptions orders and reporting within the Licensed Software and on the terms and conditions of the Agreement.
- 4.3 **Licence Conditions:** The Customer must:
- ensure the Licensed Software, Medicine File and the Documentation are protected at all times from misuse, damage, destruction or any form of unauthorised use, copying or disclosure and must not take any action that would cause the Licensed Software, Medicine File or Documentation to be placed in the public domain;
 - maintain all proprietary notices on the Licensed Software, Medicine File and Documentation;
 - immediately notify the Supplier in writing if it becomes aware of any circumstance which may suggest that any person may have unauthorised knowledge, possession or use of the Licensed Software, Medicine File or the Documentation;
 - promptly notify the Supplier in writing if it no longer uses a module supplied in the Licensed Software;
 - ensure that only persons properly authorised by the Customer have access to the Licensed Software;
 - provide the Supplier with access to such information as may be reasonably required by the Supplier to develop and maintain the Licensed Software, security access information and software interfaces to any Customer software; and
 - enable and maintain a remote connection for the Supplier to have remote access to the Licensed Software and computers for the purposes of providing Support Services.
- 4.4 **Required Operating Environment:** The Customer is solely responsible for acquiring, installing, operating and maintaining the Required Operating Environment.
- 4.5 **Updates:** The Supplier may, from time to time at its discretion, issue an Update provided however any Update must not reduce functionality or adversely affect the Customer's use of the Licensed Software. If an Update is not automatically installed, the Customer must promptly install the Update and in any event, no later than 6 months from the provision of the Update. The Customer will, in consultation with the Supplier, be responsible for ensuring Users are familiar with the Update.
- 4.6 **Failure to install an Update:** Without limiting any other provision in the Agreement, if the Customer fails to install an Update in accordance with the Agreement the Supplier may at its sole option and discretion:
- immediately cease providing Support Services;
 - on one month's written notice increase the Fees by an amount that reflects the increase in the Supplier's costs to continue providing the Support Services; and/or
 - immediately on notice terminate the relevant Service Schedule or the Agreement.
5. **PRIVACY**
- 5.1 **Compliance with Privacy Law:** Each party must comply with all applicable Privacy Laws when carrying out its obligations and exercising its rights under the Agreement.
- 5.2 **Privacy consents and notices:** The Customer must ensure it has obtained all necessary consents and provided all privacy notices required under the Privacy Laws for the collection, use, processing and disclosure of all Personal Information by the Supplier in connection with the Agreement.
- 5.3 **Overseas disclosure:** The Customer acknowledges and agrees that the Supplier may transfer Personal Information in the Customer Data out of New Zealand where Third Party Services are supplied on servers located outside of New Zealand and/or where Third Party Service Providers are based outside of New Zealand.
- 5.4 **Artificial Intelligence:** The Customer acknowledges and agrees that artificial intelligence technologies (**AI**) may form part of the functionality of the Services or Licensed Software and when using the Services or Licensed Software, AI may be used to process Personal Information in the Customer Data. The Customer accepts that there is a risk that AI may provide an incorrect output and that it is the Customer's responsibility to:
- carry out its own due diligence and AI risk assessment to ensure the suitability of the Licensed Software or Services for its requirements; and
 - complete such checks for accuracy as the Customer considers is necessary before using such outputs.
- 5.5 **Data Breach:** Subject to the Supplier's obligations under Privacy Laws, if the Supplier becomes aware of a Data Breach, the Supplier must promptly notify the Customer by using the contact details stated in the Service Schedule and take preventative action that is reasonable in the circumstances to contain the Data Breach and mitigate its effect. The Supplier will work with the Customer to agree any approach required in circumstances in relation to:
- determining whether the Data Breach is a notifiable privacy breach in accordance with the Privacy Laws;
 - carrying out any assessment required by Privacy Laws;
 - preparing any notifications required by Privacy Laws; and
 - notifying affected individuals required by Privacy Laws.
6. **FEES**
- 6.1 **Fees:** The Customer must pay the Supplier the Fees for the Services and grant of the licenses for the Licensed Software at the rates and frequency stated in the relevant Service Schedule and in accordance with the Agreement.
- 6.2 **Increase in Fees:** The Supplier may increase the Fees:
- for the provision of each Service and Licensed Software, effective from 1 January each year, on 30 days written notice to the Customer; and
 - where a Third Party Service Provider increases any fee payable by the Supplier for a Third Party Service (**Relevant Increase**) the Supplier may on 30 days written notice to the Customer increase the Fee for the relevant Third Party Service by no more than the same percentage increase as the Relevant Increase.
- 6.3 **GST:** Unless expressly stated otherwise, all amounts stated in the Agreement are GST exclusive. If any GST is chargeable on a supply made under the Agreement, the Supplier must invoice that GST against the relevant supply. All other taxes, duties, imposts and levies assessed or levied on the Customer in relation to the Agreement are deemed included in the amounts payable under the Agreement.
- 6.4 **Invoice:** Except as expressly stated in the relevant Service Schedule, Fees for the Services and Licensed Software will be invoiced on a monthly basis. The

Customer must pay an invoice no later than 20 days after the date of issue of the invoice. A failure by the Customer to pay an invoice by the due date is a material breach of the Agreement.

6.5 **Invoice disputed:** If the Customer disputes an invoice, it must no later than 10 Business Days from the date of the invoice, give written notice to the Supplier giving reasonable details of the dispute. The Customer may withhold payment of any genuinely disputed amount. If the matter cannot be resolved within 30 days of receipt of the notice of dispute, the matter must be dealt with in accordance with clause 13 (*Disputes*). Once the disputed invoice is resolved or the matter formally determined, the Customer must pay the outstanding amount (if any) within 14 days of resolution, or determination.

6.6 **No set off:** The Customer must pay invoices without any withholding, deduction or set off of any kind, subject to clause 6.5 (*Invoice disputed*).

6.7 **Interest:** If the Customer fails to pay any invoice by the due date, the Customer must pay on demand from the Supplier, interest for late payment at the rate of 2% above the overdraft interest rate charged by the Supplier's primary bank on the first Business Day of the month during which the payment falls due from the due date for payment until payment has been made.

6.8 **Reasonable costs in collecting payment:** The Customer agrees to pay the Supplier all reasonable costs (including agent's costs) incurred in recovering any debt due by the Customer under the Agreement, including commission and all reasonable legal costs.

7. INTELLECTUAL PROPERTY

7.1 **Intellectual Property Rights in the Services:** Notwithstanding any other provision in the Agreement, the Supplier (or its licensors or vendors) owns the Intellectual Property Rights in the Supplier Systems, Services and the Licensed Software. The Customer agrees that it shall have no claim or rights to any part of such Intellectual Property and the Customer will take whatever steps necessary to ensure that ownership rights in relation to such Intellectual Property Rights remains with the Supplier (or its licensors or vendors, as the case may be).

7.2 **No implied licences:** Except as expressly stated in the Agreement, the Supplier is not granting to the Customer any right or licence in the Supplier Systems, Services, Licensed Software or any Supplier Intellectual Property Rights.

7.3 **Background Intellectual Property:** Background Intellectual Property remains the property of its owner. The Agreement and the activities under the Agreement will not affect the ownership of Background Intellectual Property.

7.4 **Licence to the Supplier:** For any Background Intellectual Property that the Customer provides to the Supplier under the Agreement, the Customer grants to the Supplier for the term of the relevant Service Schedule a royalty free, non-exclusive, worldwide, licence to use that Background Intellectual Property for the sole purpose of providing the Services or Licensed Software.

7.5 **Customer warranty:** The Customer warrants that use by the Supplier of Background Intellectual Property in accordance with the licence granted in clause 7.4 (*Licence to the Supplier*) will not infringe the rights of any third party.

7.6 **New Intellectual Property Rights:** The Supplier will exclusively own all New Intellectual Property in the Services and Licensed Software when they are created. The Customer agrees it will:

- (a) retain no other rights, title or interest in the New Intellectual Property;
- (b) not dispute the Supplier's ownership of the New Intellectual Property; and

(c) take whatever steps that are reasonably necessary to ensure that ownership to such New Intellectual Property vests and remains with the Supplier.

7.7 **Customer Data:** As between the Supplier and the Customer, the Customer owns all Customer Data, including any Intellectual Property Rights in Customer Data, on and from creation. The Supplier does not acquire any proprietary right in or to any Customer Data.

7.8 **Service Analysis:** The Supplier compiles statistical and other information (but not Personnel Information) related to the performance, operation and the Customer's use of the Licensed Software (if any) and the Services (**Service Analysis**) and uses for security and operations management, statistical analysis and research and development. The Supplier may use the Service Analysis for its business purposes and where any information is disclosed to third parties or made public, the Customer will not be identified. The Supplier retains all Intellectual Property Rights in Service Analysis.

7.9 **Feedback:** The Customer grants to the Supplier a royalty free, worldwide, perpetual, irrevocable, transferable right to use, modify, distribute and incorporate into the Services and the Licensed Software and any other products and services (without attribution of any kind) any suggestions, enhancement request, recommendations, proposals, correction or other feedback or information provided by the Customer or any of its Personnel related to the operation or functionality of the Services and the Licensed Software.

8. INTELLECTUAL PROPERTY INDEMNITY

8.1 **Indemnity:** A party (**Indemnifying Party**) will indemnify the other party (**Indemnified Party**) against any direct loss, damage, liability costs or expenses incurred by the Indemnified Party as a result of a third party claim that any Intellectual Property provided by the Indemnifying Party under the Agreement infringes the Intellectual Property Rights of the third party (**IP Claim**) subject to the Indemnified Party allowing the Indemnifying Party to direct any defence and settlement of the IP Claim.

8.2 **Limitations on Supplier indemnity:** The Supplier will not be responsible or liable for any IP Claim to the extent that the infringement arises out of:

- (a) any breach of the Agreement by the Customer;
- (b) any use of the Services or Licensed Software in a manner or for a purpose not reasonably contemplated by the Agreement or otherwise not authorised in writing by the Supplier;
- (c) any use of Customer Data in the development of or the inclusion of Customer Data in the Services or Licensed Software;
- (d) any modification of the Services or Licensed Software other than by or on behalf of the Supplier;
- (e) any services, solutions, information or technology not provided by the Supplier; or
- (f) any Customer specifications or instructions.

8.3 **Steps the Supplier may take:** If any use of the Services or Licensed Software is (or the Supplier reasonably believes may be) subject to an infringement claim, the Supplier may, at its sole option and expense:

- (a) secure the right to use the Service or Licensed Software as required;
- (b) replace the Service or Licensed Software with other non-infringing deliverables of equivalent functionality;
- (c) modify the Service or Licensed Software so that they do not infringe; or
- (d) if Supplier determines that none of the foregoing is feasible, terminate the Agreement.

8.4 **Exclusive remedy:** This entire clause 8 sets out the Customer's exclusive remedy and the Supplier's only liability in respect of IP Claims.

9. CONFIDENTIALITY

- 9.1 **Maintaining confidentiality:** A party must not use or disclose any Confidential Information except as authorised in the Agreement. A party may disclose Confidential Information of the other party:
- (a) to their legal counsel;
 - (b) to accountants, banks, and financing sources and their advisors;
 - (c) in connection with the enforcement of the Agreement or rights; and
 - (d) in connection with a merger or acquisition or proposed merger or acquisition,
- provided that disclosure is on a need to know basis and the other party is subject to written confidentiality obligations at least as protective as provided in the Agreement.
- 9.2 **Precautions against unauthorised use:** Each party must take precautions to prevent disclosure or use of Confidential Information other than as authorised in the Agreement. Those precautions must be equivalent to those taken by that party to protect its own Confidential Information, or those that would be taken by a reasonable person in that party's position, whichever are greater.
- 9.3 **Disclosure required by Law:** It will not constitute a breach of confidentiality under the Agreement for a party to disclose Confidential Information of the other party that it is required by Applicable Law to disclose. If a party is required by Applicable Law to disclose Confidential Information of the other party, that disclosing party shall (unless prohibited by Applicable Law) promptly notify the non-disclosing party and reasonably cooperate (at non-disclosing party's expense) to prevent the disclosure or protect the confidentiality of any disclosed information.
- 10. WARRANTIES AND DISCLAIMERS**
- 10.1 **No implied warranties:** Except as expressly stated in the Agreement, and to the extent permitted by Applicable Law, all other conditions, guarantees or warranties whether expressed or implied by statute (including any warranty under Part 3 of the Contract and Commercial Law Act 2017) in respect of the Supplier, the Services and the Licensed Software are expressly excluded. The Customer agrees that it is acquiring the Services and the grant of the licenses for the purposes of a business and that the provisions of the Consumer Guarantees Act 1993 do not apply. The Customer agrees this clause is fair and reasonable in the circumstances
- 10.2 **Customer warranties:** The Customer warrants to the Supplier on a continuous basis during the Term that:
- (a) it has and will maintain all necessary consents, authorisations and licences related to the provision of Customer Data to the Supplier pursuant to and for the processing of Customer Data in accordance with the terms of the Agreement; and
 - (b) the Customer, its Personnel or any third party appointed by or on its behalf will not service or attempt to remedy any defect or in any way interfere with the Services or the Licensed Software.
- 10.3 **Disclaimers:** The Customer acknowledges and agrees that:
- (a) it accepts responsibility for the selection of the Services and the Licensed Software to achieve its intended purpose and that the Services and the Licensed Software have not been developed to meet the Customer's individual requirements;
 - (b) the Services and the Licensed Software are provided on an "as is" basis and the Supplier does not warrant, represent or guarantee that the Services and the Licensed Software is or will be free from errors or that the Services will be able to be accessed and/or used without problems or interruptions;
 - (c) the Supplier is not responsible or liable for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over third-party communications networks and facilities, including the internet, or the use of any third party software or services;
- (d) the Supplier is not responsible or liable for any failure in the performance or functionality of the Services or Licensed Software to the extent such failure arises from or is attributable to any modification, alteration, or change made by the Customer to the default settings or configurations provided by the Supplier and the Customer acknowledges and agrees that any such changes are made at its own risk;
 - (e) the Customer is solely responsible for the accuracy and adequacy of all reports, data and Customer Data produced, extracted and/or processed via the Services or the Licensed Software and the Supplier is not liable for any loss or damage suffered or incurred by the Customer as a result of any reports produced by or any data or Customer Data processed by or stored in the Services or the Licensed Software;
 - (f) except as expressly stated in a Service Schedule or Purchase Order, the Customer is solely responsible for protecting and backing up the data and Customer Data used in connection with or processed by the Services or Licensed Software;
 - (g) the Supplier, its Personnel and Related Companies are not engaged in the practice of medicine, giving medical advice or dispensing medicines and the Services and the Licensed Software are not designed or intended for use (and must not be relied on) as a substitute, or replacement for diagnosis, treatment recommendations and other professional and clinical decisions or judgment. All medical, dispensing and patient care decisions made in which the Services or Licensed Software may be used, and any consequences, will be the responsibility of the Customer (as well as any physicians or practitioners). The Supplier, its Personnel and its Related Companies will not be liable to the Customer or any third parties for any claims that any improper medical advice, treatment or dispensing of medicines resulted from the Customer's use or reliance upon the Services or Licensed Software;
 - (h) the Supplier is not responsible for any delays, failure or any other loss, damage or expense arising out of or in connection with any Third Party Services, and does not give any warranty or guarantee in relation to the Third Party Services;
 - (i) the Third Party Data is provided "as is" and the Supplier gives no warranty or guarantee regarding the accuracy, completeness or relevance of any Third Party Data;
 - (j) the Supplier is not responsible for the performance, reliability or security of any Third Party Integration; and
 - (k) when using a Third Party Integration, the Supplier is not liable to the Customer for any delays, failure or any other loss, damage or expense arising out of or in connection with the Customer's use of the Third Party Integration.
- 10.4 **Customer Indemnity:** The Customer will indemnify the Supplier and its Personnel against all Liabilities (including a third party claim) arising from:
- (a) any warranty provided by the Customer under the Agreement ceasing to be true;
 - (b) any receipt or use of the Licensed Software (if any) or Services otherwise than in accordance with the Agreement; and

- (c) the contents of the Customer Data or the Supplier's use and possession of the Customer Data in accordance with the Agreement.

11. LIABILITY

- 11.1 **Limitation of liability:** Subject to clause 11.3 (*No limitation*), to the extent permitted by Applicable Law, the Supplier's total liability arising under or in connection with the Agreement, including in contract, tort (including negligence), equity, statute or otherwise will in no circumstances exceed the Fees paid or payable for the relevant Service or Licensed Software in the three month period immediately prior to the event or series of related events giving rise to the liability.
 - 11.2 **No indirect losses:** To the extent permitted by Applicable Law, in no circumstances will the Supplier be liable for any:
 - (a) special, indirect or consequential losses;
 - (b) loss of profit, loss of revenue, loss of anticipated savings or loss of business;
 - (c) loss, damage or corruption of data; or
 - (d) punitive losses or damages.
 suffered by the Customer or any third party arising out of or in connection with the Agreement, including in contract, tort (including negligence), equity, statute or otherwise.
 - 11.3 **No limitation:** The limitation in clause 11.1 (*Limitation of Liability*) does not apply to:
 - (a) any liability a party may have arising as a result of damage to a third party's property or injury to or death of any person; and
 - (b) any liability a party may have for wilful misconduct, dishonesty or fraud.
 - 11.4 **Mitigation:** Each party must take reasonable steps to mitigate any loss, damage, cost or expense it may suffer or incur arising out of any act done or not done by the other party under or in connection with the Agreement.
 - 11.5 **Contribution:** No party will be responsible, liable or held to be in breach of the Agreement for any failure to perform its obligations under the Agreement or otherwise, to the extent that the failure is caused or contributed to by the prior default, negligence, misconduct, unlawful act or omission or breach of the Agreement by the other party or its Personnel.
- ## 12. TERMINATION
- 12.1 **Breach rights:** A party may terminate the Agreement immediately on written notice if the other party:
 - (a) ceases to do business in the ordinary course or suffers an Insolvency Event;
 - (b) is in material breach of the Agreement which is not capable of remedy;
 - (c) is in material breach of the Agreement and fails to remedy the breach within 30 days after written notice from the non-breaching party; or
 - (d) if as a result of a Force Majeure Event a party is unable to materially perform its obligations under the Agreement and that continues for a period of more than 30 days.
 - 12.2 **Supplier's other termination rights:** The Supplier may terminate the Agreement, or the supply of a Service, a grant of a licence for Licensed Software, or a Service Schedule where:
 - (a) the Supplier forms the view (acting reasonably) that a Regulatory Event has occurred. The Supplier will give as much notice of termination as reasonably practicable; or
 - (b) at any time from 6 months after the Initial Term or any Renewal Term on 3 months written notice.
 - 12.3 **No Service Schedule in force:** The Agreement terminates immediately when there is no Service Schedule in force.
 - 12.4 **Rights survive:** Termination in any manner will not affect any rights or obligations properly accrued to a party prior to termination.

- 12.5 **Effect of termination:** Upon termination of the Agreement:

- (a) the Supplier must issue an invoice for Fees for the Services and the grant of licenses for Licensed Software supplied under a Service Schedule but not yet invoiced;
- (b) the Customer must pay the Supplier all amounts due under the Agreement;
- (c) all licenses granted under the Agreement terminate (unless expressly stated otherwise); and
- (d) all Service Schedules in force terminate.

- 12.6 **Customer Data:** Upon termination of a Service and upon written request by the Customer made within 30 days of termination, the Supplier shall make available to Customer a copy of all Customer Data held within the Service in a commonly used electronic format (e.g., CSV, JSON, or another mutually agreed format), at no additional cost. If no such request is made within the 30 day period, the Customer will in relation to the relevant Service have no further obligation to retain or provide Customer Data, and unless otherwise required by Applicable Law will within the next 60 days delete all Customer Data held within the Customer's account in the relevant Service.

- 12.7 **Confidential Information:** Subject to clause 12.6 (*Customer Data*) upon termination of the Agreement, upon request each party must return or destroy all Confidential Information of the other party, subject to retention as required by Applicable Law or as created by automatic computer backup and archived as part of the party's normal computerised archiving system. Any Confidential Information retained by a party after termination in accordance with this clause, must be kept in accordance with the confidentiality obligations in the Agreement.

- 12.8 **Survival:** Clause 1 (*Agreement Details*), clause 7 (*Intellectual Property*), clause 8 (*Intellectual Property Indemnity*), clause 9 (*Confidentiality*), clause 10 (*Warranties and Disclaimers*), clause 11 (*Liability*), clause 12 (*Termination*), clause 13 (*Disputes*) and clause 14 (*General*) will survive termination of the Agreement and any other clause that by its nature is intended to survive termination of the Agreement.

13. DISPUTES

- 13.1 **Compliance with this clause:** No party may commence any court action relating to any dispute arising from the Agreement until it has complied with this clause unless urgent injunctive proceedings are necessary to preserve the rights of a party.
- 13.2 **Notice and good faith.** The party claiming that a dispute exists must give written notice to the other party specifying the nature of the dispute. When a notice is received both parties must use reasonable endeavours to cooperate to resolve the dispute in good faith.
- 13.3 **Negotiation:** Upon receiving written notice of dispute, the parties must attempt to resolve the dispute through negotiation. If the parties have not resolved the dispute within 20 Business Days of notification, one party may refer the dispute to mediation or, if agreed by the parties, some other form of alternative dispute resolution.
- 13.4 **Costs:** Each party must pay its own costs of mediation or alternative dispute resolution under this clause 13.
- 13.5 **Continuation of Agreement:** Each party must, to the extent practicable continue to perform its obligations under the Agreement even if there is a dispute.

14. GENERAL

- 14.1 **Force Majeure:** Except for Customer's obligation to pay Fees, a party is not liable to the other for any failure to perform its obligations under the Agreement to the extent caused by a Force Majeure Event, provided that the affected party:
 - (a) promptly notifies the other party and provides full information about the Force Majeure Event;

- (b) uses reasonable efforts to overcome the Force Majeure Event; and
- (c) continues to perform its obligations to the extent practicable.
- 14.2 **Rights of third parties:** Except as expressly set out in the Agreement, no person other than the Supplier and the Customer has any right to a benefit under, or to enforce, the Agreement.
- 14.3 **No waiver:** To waive a right under the Agreement, the waiver must be in writing and signed by the waiving party. The failure of a party to enforce any right at any time shall not be a waiver of any right.
- 14.4 **Cumulative Rights:** The rights of a party are cumulative upon and not exclusive of any rights provided by law.
- 14.5 **Relationship:** Nothing in the Agreement will be deemed or construed to constitute any party a partner, agent, fiduciary or representative of another party or to create any trust, fiduciary or commercial partnership. No party may act for or represent the other party, or incur any obligation on behalf of the other party except as expressly provided in the Agreement.
- 14.6 **Assignment:** The Customer must not assign or transfer any of its rights or obligations under the Agreement without the prior written consent of the Supplier. A change in ownership of the Customer resulting in a change of effective control of the Customer is deemed to be an assignment under this clause 14.6.
- 14.7 **Severance:** If any clause of the Agreement is found to be unenforceable, illegal or invalid, the clause is deemed modified to the extent required to remedy the illegality, unenforceability or invalidity, or if modification is not possible, the clause will be treated as severed from the Agreement without affecting any other clause.
- 14.8 **Notices:** Any notice given by a party for the purposes of the Agreement must be delivered to the other party via email using the email address set out in the Service Schedule or otherwise notified by the other party for this purpose. If the notice is given under clause 8 (*Intellectual Property Indemnity*), clause 12 (*Termination*), clause 13 (*Disputes*) or clause 14.1 (*Force Majeure*), a copy of that email must be immediately delivered (by hand or courier) to the chief executive or equivalent officer of the other party at the party's address set out in the Service Schedule or otherwise notified by the other party for this purpose.
- 14.9 **Variation:** The Supplier may vary the Agreement at any time on 90 days written notice to the Customer provided however the variation must not materially reduce the benefit or materially increase the burden of the Agreement for the Customer. Any other variation to the Agreement will not be effective unless it is in writing and agreed to by an authorised representative of both parties.
- 14.10 **Entire Agreement:** The Agreement records the entire agreement between the parties regarding its subject matter and supersedes all previous oral or written agreements, understandings, representations or warranties dealing with the same subject matter.
- 14.11 **Law:** The Agreement is governed by and interpreted in accordance with the laws of New Zealand. Each party submits to the non-exclusive jurisdiction of the courts of that place and the courts of appeal from them.
- 15. DEFINITIONS AND INTERPRETATION**
- 15.1 **Defined Terms:** In the Agreement, unless the context requires otherwise, defined terms shall have the meanings set out below:
- (a) **Access Credentials** means a user name, password, token or other identifier or access credentials to access or use the Licensed Software or Services, or receive the Services;
- (b) the **Agreement** means these General Terms and Conditions including its Schedules, together with all Service Schedules;
- (c) **Applicable Law** means all legislation, statute, act, regulation, subordinate legislation, rule, by-law, order (and in relation to the Supplier includes any waiver granted to permit the Supplier to provide a Service) which is in force from time to time that is binding on a party;
- (d) **Background Intellectual Property Rights** means any Intellectual Property Rights that are existing as at the Start Date or that arise, or have arisen, independently of the activities of either party in connection with the Agreement and includes any enhancement, modification or derivative work of the Intellectual Property;
- (e) **Business Day** means any day other than a Saturday, Sunday or any public holiday observed in Christchurch, New Zealand;
- (f) **Confidential Information** means any information (other than Excluded Information) that is disclosed to or obtained by a party relating to the other party's (disclosing party) past, present, or future business, plans, technology, products, or services, that is confidential and of substantial value to a party, which value would be impaired if disclosed to third parties. **Excluded Information** means information that:
- (i) is or becomes public other than as a result of a breach of any obligation under the Agreement;
- (ii) when disclosed is already in the possession of a party as the result of disclosure by a person that is not under an obligation to keep the information confidential;
- (iii) after it is disclosed under the Agreement is disclosed to a party by a person that is not under an obligation to keep the information confidential;
- (iv) a party develops independently before or after the other party discloses equivalent information; or
- (v) is approved for public release by the disclosing party's written authorisation;
- (g) **Customer Data** means all data, content and information (including Personal Information), in any form that is owned, held, used or created by or on behalf of the Customer that is stored, used, or inputted into, and made accessible from the Services or Licensed Software (as the case may be), but excluding Systems Metadata;
- (h) **Data Breach** means any actual misuse or loss of, interference with or unauthorised access to, modification of or disclosure of any Personal Information in Customer Data held by the Supplier in connection with the Agreement;
- (i) **Documentation** means the operating manuals, user instruction manuals, technical literature and all other related materials in human-readable or machine-readable forms supplied by the Supplier (if any) and includes any update of the documentation;
- (j) **Fees** means fees payable by the Customer for the Services and Licensed Software as set out in the relevant Service Schedule or as otherwise agreed in writing by the parties, as amended in accordance with clause 6.2 (*Increase in Fees*);
- (k) **Force Majeure Event** means any cause beyond a party's reasonable control including any act of God, governmental act, war, fire, flood, explosion, civil commotion, strike, lockout or other industrial action (including any such action by sub-contractors of the Supplier);
- (l) **Good Industry Practice** in relation to an undertaking, means the exercise of that degree

- of skill and care which would reasonably be expected from an experienced operator engaging in the same or similar undertaking and in accordance with all applicable industry standards;
- (m) **Initial Term** means the initial term stated in a Service Schedule (if any);
- (n) **Insolvency Event** means becomes insolvent, liquidated or bankrupt, has an administrator, receiver, liquidator, statutory manager, mortgagee's or chargee's agent appointed, becomes subject to any form of insolvency action or external administration, or any analogous event;
- (o) **Intellectual Property Rights** includes copyright and all rights existing anywhere in the world and conferred under statute, common law or equity relating to inventions (including patents), registered and unregistered trademarks and designs, circuit layouts, data and databases, database schema, confidential information, know-how, and all other rights resulting from intellectual activity. **Intellectual Property** has a consistent meaning and includes any enhancement, modification or derivative work of the Intellectual Property;
- (p) **Liabilities** means all liabilities, claims, expenses, losses, damages and costs including legal expenses on a solicitor and client basis;
- (q) **Licensed Software** means the licensed software set out or referred to in a Service Schedule or as otherwise provided to the Customer;
- (r) **Malicious Code** means any computer program or virus or other code that is harmful, destructive, disabling or which assists in or enables theft, alteration, denial of service, unauthorised access to or disclosure, destruction or corruption of information or data;
- (s) **New Intellectual Property** means Intellectual Property developed under the Agreement or in the performance of the Services or supply of the Licensed Software;
- (t) **Personal Information** has the same meaning as given in the Privacy Act 2020;
- (u) **Personnel** means a party's employees, contractors, officers and agents and in relation to the Customer, includes all Users;
- (v) **Privacy Law** means all applicable statutory or regulatory provisions relating to the protection, transfer, handling, or processing of Personal Information (for example, Privacy Act 2020 including all mandatory codes issued under the Act);
- (w) **Regulatory Event** means any legislative or regulatory change (including any determination, director or decision made by the Director General of Health, regulator or regulatory authority) that directly or indirectly materially alters the burden (financial or otherwise) of the Supplier in providing the Service or Licensed Software or may result in the Supplier breaching any Applicable Law;
- (x) **Related Company** has the meaning given to it in the Companies Act 1993;
- (y) **Renewal Term** means renewal term stated in a Service Schedule (if any);
- (z) **Required Operating Environment** means the required operating environment as detailed <https://toniq.zendesk.com/hc/en-nz/articles/7328980556943-Computer-Hardware-Requirements> as updated or amended from time to time or as notified in writing by the Supplier from time to time.
- (aa) **Services** means the specific services set out or referred to in a Service Schedule, including any Documentation and includes any individual service or component which constitutes the service and any Third Party Service, and Support Services;
- (bb) **Service Schedule** means a Service Schedule issued by the Supplier detailing the Services and/or Licensed Software to be provided by the Supplier that has been accepted by the Customer (acceptance will be deemed if the Customer starts or continues to use the Services or Licensed Software after receipt of the Service Schedule);
- (cc) **Start Date** means the Start Date of the first Service Schedule;
- (dd) **Supplier Systems** means the Supplier's software, IT solutions, systems and networks (including software and hardware) used to provide the Services, including any third party solutions, systems and networks;
- (ee) **Support Services** means the services detailed in Schedule 1;
- (ff) **Systems Metadata** means data which is embedded in the Supplier Systems which is unable to be separated and transferred to the Customer where that data is generated automatically in the course of performing the Services;
- (gg) **Third Party Integration** means any third party products, services, software or systems that are integrated with or used in conjunction with the Services or Licensed Software and includes any Third Party Integration referred to in a Service Schedule;
- (hh) **Third Party Data** means information that is supplied by a third party that is incorporated into or is part of the Services or Licensed Software;
- (ii) **Third Party Service** means a service or other deliverable (including Third Party Data) supplied by a third party that is incorporated into or is part of the Services or Licensed Software and **Third Party Service Provider** means the third party that supplies a Third Party Service;
- (jj) **Third Party Services Terms and Conditions** means any Third Party Service Provider's terms and conditions that apply to a Service or Licensed Software detailed in Schedule 2 as amended or updated from time to time;
- (kk) **Update** means a release of the Licensed Software that is made generally available by the Supplier that corrects faults, adds functionality or otherwise amends or upgrades the Licensed Software;
- (ll) **Vault Services** means the Supplier's back up data services.
- 15.2 **Interpretation:** In the Agreement, unless the context otherwise requires, the following rules apply:
- (a) clause and other headings are for ease of reference only and do not affect the interpretation of the Agreement;
- (b) the singular includes the plural and vice versa;
- (c) words importing a gender includes the other gender;
- (d) where a word or phrase is defined its other grammatical forms have a corresponding meaning;
- (e) a person includes an individual, a body corporate, an unincorporated body of persons, a trust, a government department or any other entity;
- (f) a reference to a section, clause, or schedule is to a section, clause, or schedule in this these General Terms and Conditions;

- (g) \$ and dollars is a reference to New Zealand currency;
- (h) including and similar words do not imply any limit;
- (i) a reference to any party in the Agreement includes that party's successors or permitted assigns;
- (j) any legislation includes references to its regulations, order or notices and any amendment, consolidation, re-enactment or replacement of that legislation; and
- (k) no clause is to be read against a party because the term was first proposed or drafted by that party.

SCHEDULE 1: SUPPORT SERVICES

INITIAL IMPLEMENTATION

Should the Location require specific additional training, onsite training can be arranged at (minimum three hours), plus agreed travel costs

ONGOING HELP DESK SERVICES

The help desk services will vary according to times and are set in two groups, being 'standard business hours' and 'after-hours'. These are detailed below.

Contact should only be made by a manager or person responsible for the operation.

The Supplier cannot guarantee that all help desk calls will be answered satisfactorily, or that help-desk staff will always be available. See section 'Service Levels' for availability.

ONGOING HELP DESK SERVICES DURING STANDARD BUSINESS HOURS

Via 03 341 0195

Includes:

1. response to support requests including phone/dial-in advice to locations. Where on-location assistance is requested by the Customer, the Supplier may charge for that assistance at its standard hourly rates and expenses;
2. on-going improvements to documentation and education materials;
3. advice to the Customer or hardware vendor about setting up authorised equipment;
4. reasonable "how to use" advice on Licensed Software. This is of the nature of short responses to technical questions and not education nor training of new or unskilled staff; and
5. communication with the Customer's hardware and other third party suppliers to advise about the requirements for the on-going efficient operation and security of the Licensed Software.

Excludes (as examples):

1. Resolving problems caused by the Customer or third party using the Licensed Software in a manner which is contrary to the Agreement;
2. Taking responsibility for fixing defects in equipment or software supplied by the Customer or its own contractors, even if the equipment or software or those contractors have been authorised by the Supplier. Though, if the Supplier has authorised specific equipment, software or contractors then the Supplier will actively investigate the problem, consult and offer advice to assist the Customer;
3. Resolving problems which were caused by the Customer or third party manipulating the Licensed Software or intervening in the database (e.g. running SQL Queries) when this has not been authorised in writing by the Supplier;
4. resolving problems caused by viruses (and similar 'malware') which have not originated from the Licensed Software or Services;
5. resolving problems caused by use of third party software which has somehow affected the Licensed Software;
6. making the Licensed Software work in conjunction with equipment that is not authorised;
7. assistance to staff or contractors or doctors who could be reasonably expected to learn the operation of Licensed Software or Services from other skilled staff within the Customer's team. Training of staff and others, unless specified, is not part of the support services;
8. adding/amending users or patients or GPs (these services may be chargeable);
9. resolving problems in situations where the Customer's support staff and systems do not have reasonable or co-operative access to the Location, relevant computers at the Location or relevant employees. Reasonable access, with respect to time, is the Supplier's business hours. However, the Supplier will actively co-operate to resolve problems at mutually agreeable hours;
10. resolving problems, in situations where the Customer will not co-operate with reasonable advice received from the Supplier, such as implementing current technologies or up-skilling staff;
11. set-up of third party licences or, for instance, third party communications, networks;
12. setting up or distributing documentation, training materials or data which is requested by the Customer and specific to the Customer; or
13. resetting passwords. At times the Supplier, at its discretion, may assist.
14. Providing recommendations on hardware options.

In many of the examples above, the Supplier's help desk may offer an informal no-liability opinion at no extra fee, but the Supplier may charge for services to assist the resolution of the problem.

ONGOING HELP DESK SERVICES AFTER-HOURS

Includes only

1. support services best actioned after-hours and previously scheduled with the Supplier;
2. response to any Priority 1 or Priority 2 Faults;
3. limited "how to use" advice on Licensed Software. This is of the nature of short responses to technical questions which are important to the immediate operation of the Supplier. Does not include education nor training of new or unskilled staff. Support staff may suggest that the caller contact other staff at the location or business (e.g. nurse manager, other facility); and

4. where necessary, and infrequent, response to re-setting passwords when other authorised staff at the location are not available. The Supplier is likely to request that the staff contact an authorised person in the location (e.g. manager).

Excludes

All services apart from those described above. The Supplier's Help Desk may, at its option, offer an informal no-liability opinion at no extra fee, but the Supplier may charge for services to assist the resolution of the problem. Charges will be invoiced monthly and the Customer must pay in accordance with the payment terms in this agreement.

SERVICE LEVELS

General

Categories of errors or defects ("Faults")

When reporting a Licensed Software error or defect the Customer may designate the priority of the Fault in accordance with the following categories:

PRIORITISATION MATRIX

		Impact		
		High / System Wide Whole Business / All Retail / All Dispensary / All Users	Medium Multiple Users or Workstations	Low Single User or Workstation
Urgency	High Can not perform primary work functions	Urgent	High	Normal
	Medium Work functions impaired / workaround in place	High	Normal	Low
	Low Inconvenient	Normal	Low	Low

Priority	Response	Resolution
Urgent	15 minutes	1 hour
High	2 hours	8 hours
Normal	8 hours	5 business days
Low	24 hours	10 business days

If the Supplier does not agree with the priority of Fault designated by the Customer, both parties will work together in good faith to determine the Fault priority level, with the primary objective of resolving the Fault.

The action timetable to be followed in respect of each Fault (as defined above) and that must be met or exceeded by the Supplier are as follows:

Response Time is the time between the problem being reported to the Supplier by the Customer and an acknowledgement that the description of the problem has been understood and an investigation scheduled.

Resolution Time is the time from when the call is reported until the Supplier solves the Fault or establishes a 'work around' or finds an agreeable solution to continue operation until Toniq can identify a permanent solution to the problem (provided that the 'work around' or agreeable solution must resolve the impact of the Fault). For the Vault Service, this excludes the time to restore the Backup Data.

HELP DESK SERVICE HOURS

The Help Desk Support Services shall be provided during the following hours provided however these may vary on 30 days' notice:

Standard Business Hours	8am to 6pm during Business Days
After-Hours	7am to 10pm on Saturday, Sunday and Public Holidays 6pm to 10pm on Business Days

Contact:

Phone number	03 341 0195 (during Standard Business Hours)
Email	support@toniq.co.nz

SCHEDULE 2

THIRD PARTY SERVICES TERMS AND CONDITIONS

Effective May 2025

Medicine File

Data Providers means the GUILD Pharmacodes, New Zealand Universal List of Medicines (NZULM), New Zealand Medicine Formulary (NZF) and New Zealand Pharmaceutical Agency (PHARMAC) and any other third-party data provider as notified by TONIQ in writing from time to time.

The Medicine File includes data from Data Providers and is subject to the following additional terms and conditions (and any other terms and conditions required by Data Providers as notified by TONIQ in writing from time to time).

1. The Data Providers are the original creators of the applicable content in the Medicine File
2. The Data Providers do not guarantee any accuracy in any information in the Medicine File.
3. The Data Providers take no responsibility for any errors or omissions and shall not be responsible for any consequences arising there from.
4. If Customer shares or adapts any data in the Medicine File it must attribute the data, in writing to the applicable Data Provider.
5. For additional terms and conditions see:
NZULM information, refer to: [Data Access | NZULM](#)
PHARMAC licences under the Creative Comms Attribution 4.0 International Licence

Supplier of Text Messaging (SMS) Functionality

“You” means Customer

“We or “SMS Provider” means the provider of the text messaging functionality within the Licensed Software

These terms and conditions apply when the Customer (or any of its Personnel or Users) use the text messaging functionality within the Licensed Software. The Customer agrees that the Supplier may provide information about the Customer to the SMS Provider as reasonably requested by the SMS Provider in order to provide this functionality and service, and including following an unsolicited or spam text message incident. Such Customer information to include the name of the Customer or content provider that was responsible for sending the message, times and details of the message and volume of end users impacted, along with any other information SMS Provider may reasonably require.

You may be issued with usernames or account designations and passwords upon completing the Service subscription process. You are responsible for maintaining their confidentiality, and for all activities that occur under your password or account. You agree to immediately notify the Supplier of any loss, unauthorised access, or unauthorised use of your password or account.

General Responsibilities

Prohibited Activities

You will be deemed to be in violation of this Acceptable Use Policy when you engage in any of the following prohibited activities when using the text messaging services within the Licence Software (Services). If You breach the AUP, the Services may be suspended until such time as the failure is remedied

1. **Unacceptable Content**
 - 1.1. Infringement of intellectual property rights or other proprietary rights including, without limitation, material protected by copyright, trademark, patent, trade secret, or other intellectual property right used without proper authorization. Infringement may result from, among other activities, the unauthorized copying and posting of pictures, logos, software, articles, musical works, and videos.
 - 1.2. Transmission or dissemination of, sale, storage or hosting of material that is unlawful, libelous, tortious, defamatory, obscene, pornographic, indecent, lewd, vulgar, harassing, threatening, harmful, invasive of privacy or publicity rights, abusive, inflammatory, hateful, or racially, ethnically or otherwise objectionable by Applicable Law;
 - 1.3. Posting or sending of software or technical information in violation of any Applicable Laws.
 - 1.4. Disseminating or hosting harmful content including, without limitation, viruses, Trojan horses, worms, time bombs, cancelbots or any other computer programming routines that may damage, interfere with, surreptitiously intercept or expropriate any system, program, data or personal information.
 - 1.5. Offering or disseminating fraudulent goods, services, schemes, or promotions (e.g. make money fast schemes, chain letters, pyramid schemes), or furnishing false data on any signup form, contract or online application or registration, or the fraudulent use of any information obtained through the use of the Services, including without limitation use of false or stolen credit card numbers.
2. **Unsolicited Content**
 - 2.1. Sending unsolicited commercial messages sent by email, text message, multimedia message, instant message or posted to websites by means of comment submission that is in breach of Applicable Laws or Mobile Network Operator requirements which have been provided to you in writing. We will use all reasonable endeavours to provide you with at least 3 months' notice to comply with the requirements.
3. **System and Network Security**

- 3.1. Unauthorised access to or use of data, systems or networks, including any attempt to probe, scan or test the vulnerability of a system or network or to breach security or authentication measures without express authorisation of the owner of the systems, or network.
- 3.2. Unauthorised monitoring of data or traffic on any network or system without express authorisation of the owner of the system or network.
- 3.3. Interference with service to any user, host or network including, without limitation, mailbombing, flooding, deliberate attempts to overload a system and broadcast attacks. Intentional interference also means the use of any kind of program/script/command, or sent messages of any kind, designed to interfere with a user's terminal session, via any means, locally or by the Internet.
- 3.4. Forging of any TCP-IP packet header or any part of the header information in an email, SMS message or newsgroup posting. This prohibition does not include the use of aliases or anonymous remailers.
- 3.5. Using manual or electronic means to avoid any use limitations placed on the Services such as timing out.
- 3.6. Failing to have in place appropriate security policies, procedures and system controls to prevent unauthorized access to accounts, including any account passwords.

4. System Performance

- 4.1. Taking any action that may (in SMS Provider's reasonable opinion) result in an overload of SMS Provider's network, servers or systems or those of its Suppliers. We may prohibit the running of any such application which, in our reasonable opinion, endangers the stability or performance of the Services.
- 4.2. Use of IP multicast other than by means provided and coordinated by us;
- 4.3. Attempting to use our Services for the purposes of engaging in denial of service attacks on our or any other Services.

5. Other Prohibited Activities

- 5.1. Adding or attempting to add addresses to any mailing list in breach of Applicable Law..
- 5.2. Reselling Services to third parties that do not abide by this AUP.
- 5.3. Use of any Service in a manner intended to harm minors in breach of Applicable Law.
- 5.4. Impersonation of any person or entity, or falsely stating or otherwise misrepresenting your affiliation with a person or entity.
- 5.5. Stalking or otherwise harassing another in breach of Applicable Law.
- 5.6. Use of any Service in breach of any Applicable Law.

6. Audit of Content

- 6.1. If required by a Mobile Network Operator we or the relevant Mobile Network Operator may at any time, and from time to time intercept, read, store and otherwise deal with the Content for the purpose of ascertaining your compliance with this AUP, provided however (i) we will comply with the Data Protection requirements in Schedule 2; (ii) any use or disclosure of the Content will be in accordance with all Applicable Laws; and (iii) if possible, prior to commencing our investigation, we will notify you of our intention to investigate.
- 6.2. We may delete any Content stored using the products or services, in our absolute discretion, if we consider that the Content is in breach of Applicable Laws or otherwise in contravention of this AUP. We will inform you of any deletion prior to deleting the Content.

7. Content and Advertising Approval

- 7.1. We (together with the Mobile Network Provider) reserve the right to review all Content and Advertising for every proposed or existing Service provided however (i) we will comply with the Data Protection laws; (ii) any use or disclosure of the Content will be in accordance with all Applicable Laws; and (iii) prior to commencing the review, we will notify you of our intention to review.
- 7.2. In this regard, all such Services and Advertising may be required to:
 - Be submitted to us for approval by the Mobile Network Provider (in its discretion) and in respect of Advertising be accompanied by an indication of the media, publications and times at which it is intended that the Advertising will be made public.
 - Comply with all relevant codes of advertising published by the Advertising Standards Authority.
 - Comply with all Applicable Laws.

8. Subject to our specific written authorisation to the contrary, Content must not:

- 8.1. Infringe any Intellectual Property Rights;
- 8.2. Detrimentally affect the brand or reputation of SMS Provider or the Mobile Network Provider;
- 8.3. Be placed under the heading of adult entertainment or similar headings;
- 8.4. Be misleading as to the nature, type, price service or benefits of the product or service being advertised;
- 8.5. Contain inaccurate, ambiguous, exaggerated, defamatory, untrue or out of date information;

- 8.6. Encourage, counsel, incite or suggest any criminal or unlawful acts;
- 8.7. Contain vulgar and/or suggestive language or images or innuendo or slang of a sexual, immoral or violent nature;
- 8.8. Promote the competitors of the Mobile Network Provider; or
- 8.9. Promote or provide inflammatory or demeaning opinions of any individual or group.

9. Complaints

- 9.1. Where any Customer contacts us or the Mobile Network Provider with a complaint regarding any Content services, we may provide the Customer with your contact details and inform them that the Content service was provided by you.
- 9.2. Where any government or regulatory body commences an investigation in respect of a Content service, you must provide assistance and co-operate with any such investigation as reasonably required by us. We may also assist and co-operate with any such investigation by providing some or all relevant information requested by such bodies.
- 9.3. You will have a contact number available to Customers and will maintain suitable information and helpdesk services that are available during business hours to assist any Customer that contacts you with a complaint or requiring any information regarding any Content service.
- 9.4. You acknowledge and agree that the Services rely on Mobile Network Providers systems and networks for the delivery of Messages and that SMS Provider shall have no responsibility or liability for the acts or omissions of such Mobile Network Providers.
- 9.5. You acknowledge and agree that a Mobile Network Provider may place a bar on a Customer's mobile device that prevents that Customer from using Services. When these circumstances apply, you will still be charged for undelivered SMS messages.
- 9.6. You acknowledge and agree that if there is a change in any Applicable Law or the introduction of a new Applicable Law and if SMS Provider continues to supply the Services it would be in breach of that Applicable Law (as amended or introduced), SMS Provider may amend the scope of the Services (but only to the extent that the Services become compliant with the Applicable Law (as amended)) provided however SMS Provider will give you as much notice as reasonably practicable of any such amendments. You agree to comply with any reasonable requests from SMS Provider with respect to the manner in which you use the Services if necessary to comply with the relevant Applicable Law (as amended or introduced).